

N88zzHARh-ND

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.
5 (LTS)

22 Cr. 457

6 AIMEE HARRIS,

Conference

7 Defendant.

8 -----x

9 New York, N.Y.

August 8, 2023
2:06 p.m.

10
11 Before:

12 HON. LAURA TAYLOR SWAIN,

13 Chief Judge

14
15 APPEARANCES

16 DAMIAN WILLIAMS

United States Attorney for the
Southern District of New York

17 JACQUELINE C. KELLY

18 Assistant United States Attorney

19 THE LAW OFFICE OF ANTHONY CECUTTI

Attorneys for Defendant

20 BY: ANTHONY CECUTTI

21 KESTINE THIELE

22 Also Present:

23 Laura Gialanella, Pretrial Services Officer

N88zzHARh-ND

1 (Case called)

2 THE COURT: Good afternoon. Would
3 everyone other than counsel please be seated.

4 Good afternoon, counsel, would you please
5 introduce yourselves starting with counsel for the
6 government.

7 MS. KELLY: Good afternoon, your Honor,
8 Jacqueline Kelly for the government, and with me at
9 counsel table is United States Pretrial Officer
10 Laura Gialanella.

11 THE COURT: Good afternoon, Ms. Kelly, and
12 good afternoon, Officer Gialanella.

13 MR. CECUTTI: Good afternoon, your Honor,
14 Anthony Cecutti and Kestine Thiele for Aimee Harris,
15 who is present by phone.

16 THE COURT: Good afternoon, Mr. Cecutti
17 and Ms. Thiele. Ms. Harris, are you on the phone?

18 THE DEFENDANT: Yes. Yes, your Honor.

19 THE COURT: Thank you. And you requested
20 to participate by telephone today; is that correct?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Thank you. Good afternoon to
23 you.

24 THE DEFENDANT: Good afternoon.

25 THE COURT: Please be seated, counsel. So

N88zzHARh-ND

1 we are here in connection with the request of the
2 pretrial services department for modification of
3 Ms. Harris' conditions of release, and that request
4 is set forth in the memorandum from pretrial
5 services which is dated July 21st, 2023. I've also
6 reviewed two submissions from defense counsel, both
7 of which are dated July 26, 2023.

8 Are there any other written submissions
9 that the parties intend me to have considered in
10 connection with this proceeding?

11 MS. KELLY: Not from the government, your
12 Honor.

13 MR. CECUTTI: No, your Honor.

14 THE COURT: Thank you. I'll first ask
15 Officer Gialanella to give us a status update on
16 supervision.

17 MS. GIALANELLA: Yes, Judge. So since the
18 memo was submitted to your Honor on July 20th,
19 it's my understanding that the defendant will be
20 meeting with her probation officer in Florida
21 tomorrow to set up the substance abuse evaluation
22 and treatment. Since the July 11th drug test,
23 which was positive for marijuana, all subsequent
24 tests have been negative for all drugs and alcohol.

25 THE COURT: Thank you. And are you aware

N88zzHARh-ND

1 of the status of the DUI matter?

2 MS. GIALANELLA: It's set for arraignment
3 still on August 10th, 2023, in Palm Beach.

4 THE COURT: Thank you. And are you
5 continuing the request for modification of the
6 conditions of supervision to include abstention from
7 alcohol and testing and treatment as deemed
8 necessary by pretrial services?

9 MS. GIALANELLA: Yes, your Honor.

10 THE COURT: Thank you. Ms. Kelly, did you
11 wish to say anything before I call on Mr. Cecutti?

12 MS. KELLY: Not with respect to the
13 modification request, your Honor.

14 THE COURT: Thank you. And that's what
15 we're taking up first. We'll later talk about the
16 sentencing date. Mr. Cecutti?

17 MR. CECUTTI: The only issue that we have,
18 your Honor, is with respect to the condition that
19 Ms. Harris abstain from alcohol. We don't think at
20 this time it would be an appropriate condition to
21 add to her bail conditions. This is the first
22 incident that she's had related to alcohol while
23 she's been on supervision.

24 Secondly, she has taken it upon herself to
25 be evaluated for any kind of alcohol or substance

N88zzHARh-ND

1 abuse problem. As pretrial noted, she will be
2 participating in an intake or an evaluation to
3 determine if, in fact, she does need some type of
4 treatment. Additionally, she informed Ms. Thiele
5 and I that as part of her DUI case, she is going to
6 be signing up for a DUI class that she will be
7 participating in in Florida as part of that case.

8 So I think that condition would be
9 premature at this time. I think we need to see what
10 information is learned from the evaluation, and then
11 decide how to proceed with respect to that
12 condition. But at this time, we would object to the
13 addition of the prohibition against alcohol use.

14 THE COURT: Thank you. Officer
15 Gialanella, since there is consent to evaluation and
16 treatment as deemed necessary as a result of the
17 evaluation, is there an independent reason for
18 asking me for a complete prohibition on alcohol?

19 MS. GIALANELLA: Yes, your Honor. It
20 would be --

21 THE COURT: Would you stand and talk a
22 little louder, please.

23 MS. GIALANELLA: Yes, sorry.

24 THE COURT: Thank you.

25 MS. GIALANELLA: Yes, your Honor. It

N88zzHARh-ND

1 would be difficult to have somebody be in alcohol
2 treatment without having a way to monitor the
3 alcohol use. There wouldn't really be a way to know
4 if she's using excessively or -- it's better to just
5 abstain completely so we know that she's
6 participating in treatment and following the
7 sobriety that they would require in the treatment.

8 THE COURT: In my general experience with
9 substance abuse treatment programs, I'm not asked
10 for a -- well, I guess there is a standard condition
11 of supervision, which is no illegal use of drugs,
12 and then the programs generally test. So are you
13 looking at the prohibition on alcohol as being an
14 analogue to the mandatory condition of supervision
15 of no illegal use of substances? Because I've had
16 people under conditions, either for probation or for
17 pretrial, of being in an alcohol -- sometimes it's
18 called an aftercare program or an alcohol treatment
19 program. I, frankly, don't remember having a
20 separate prohibition on the use of alcohol. I
21 thought that was sort of subsumed in the terms of
22 the program.

23 MS. GIALANELLA: Typically, we reserve the
24 condition of the no alcohol use if there's a reason
25 such as a DUI arrest or an alcohol-related offense

N88zzHARh-ND

1 that we see in their background or a violation that
2 occurs. So it's a way to mitigate that, ideally,
3 from that happening again.

4 While they are in treatment, we can
5 monitor if the progress and the treatment is being
6 successful, but there's no way to know, you know, if
7 she's drinking excessively when she's not at
8 treatment, if she's following the directives. It
9 kind of goes hand in hand with alcohol treatment to
10 completely abstain from alcohol use, just like any
11 other drug. So if it was marijuana, heroin,
12 anything like that, they would expect full
13 abstaining from it whether it's legal or not. So I
14 understand that alcohol is legal, but with the DUI
15 arrest, that kind of throws something new into the
16 situation where there might be an underlying problem
17 that needs to be addressed.

18 THE COURT: Mr. Cecutti?

19 MR. CECUTTI: Your Honor, and in opposite,
20 there may not be an alcohol problem. I think that's
21 the purpose of the evaluation that Ms. Harris is
22 more than willing to participate in. If she doesn't
23 have a problem, then obviously I don't think it
24 would be appropriate for the condition to be added.
25 If the provider believes that there is some kind of

N88zzHARh-ND

1 issue or problem where treatment is necessary, I
2 would expect that provider to instruct Ms. Harris
3 that she should not be drinking alcohol while she's
4 in treatment.

5 Which brings me to another point, which
6 is, we have no idea at this point what treatment
7 would even be recommended if, in fact, it is
8 recommended by the provider. I've had experiences
9 where a provider may recommend three sessions with
10 an individual counselor. I've had other experiences
11 where a client has participated in six months of
12 outpatient treatment that consists of individual and
13 group therapy. So there's a wide variety of
14 treatment in terms of nature and length, and we're
15 just not there yet. So, again, our position is: At
16 this time, it would not be an appropriate condition
17 to be added.

18 THE COURT: Thank you. Given that there
19 is the one known incident and arrangements have been
20 made for evaluation, testing and treatment as may be
21 appropriate, I will not include the abstention
22 provision. I'm also doing this mindful of the fact
23 that we will soon be going to sentencing and
24 evaluating what conditions will be appropriate with
25 respect to any supervision. I am also taking into

N88zzHARh-ND

1 account here the representation that in connection
2 with the DUI offense, Ms. Harris will be in some
3 sort of course or supervised program. And so, it
4 appears to me that in the short term, there will be
5 sufficient attention to any problem that exists and
6 the potential for the abuse of alcohol.

7 It is certainly my hope that Ms. Harris
8 has taken notice of the situation that she's in and
9 how that came to be, and so my expectation is that
10 that will be a moderating factor on any potential
11 for abusive behavior as well. The application for
12 change in conditions of supervision is granted to
13 the extent that I will add the condition of alcohol
14 testing and treatment. And if you'll give me a
15 moment, I will write that up in an order.

16 What I've written is, "For the reasons
17 stated on the record at the August 8th, 2023,
18 conference, the defendant's conditions of
19 supervision are modified to add the condition that
20 defendant must undergo alcohol abuse evaluation and
21 treatment as recommended by the provider. All other
22 conditions remain in place as previously
23 established."

24 Officer Gialanella, will that suffice in
25 terms of language?

N88zzHARh-ND

1 MS. GIALANELLA: Yes, your Honor.

2 THE COURT: Mr. Cecutti, does the defense
3 have any objection to that language?

4 MR. CECUTTI: No, your Honor, thank you.

5 THE COURT: Very well. That order will be
6 entered this afternoon.

7 So now let's turn to setting the
8 sentencing date. The sentencing had been scheduled
9 for today. At defense counsel's request, I've
10 adjourned the sentencing from today in anticipation
11 of setting a new, firm sentencing date today. And
12 so, Mr. Cecutti, what sort of period are you looking
13 for in advance of the sentencing?

14 MR. CECUTTI: Your Honor, we -- as we
15 indicated in our letter dated July 26th, we are
16 asking for an adjournment of approximately 45 days.
17 I think that would bring us to sometime in
18 mid-September. And to be specific, your Honor,
19 specifically, it's actually a little bit longer when
20 you factor in a work-travel schedule that we have.
21 It would be -- we're requesting the week of
22 September 25th.

23 THE COURT: In that week, I can give you
24 10:00 a.m. on Wednesday the 27th of September.
25 Would you be available then?

N88zzHARh-ND

1 MR. CECUTTI: We are, your Honor. But I
2 just want to make sure that that would -- there are
3 no complications for Ms. Harris because she will
4 have to travel here. Perhaps we can just text her?
5 She's on her phone, and we can text her to make sure
6 that that date and time works.

7 THE COURT: That's fine. Would you prefer
8 doing it by text than to my asking her?

9 MR. CECUTTI: Sure. Great idea, your
10 Honor.

11 Ms. Harris, does that work for you,
12 September 27th at 10:00 a.m.?

13 THE DEFENDANT: Yes, your Honor, that
14 works for me.

15 THE COURT: Very well, then. Ms. Kelly,
16 does that work for the government?

17 MS. KELLY: Yes, your Honor.

18 THE COURT: Very well. Sentencing is set
19 for September 27th, 2023, at 10:00 in the morning.
20 I'm going to print out the order concerning the
21 modification of supervision conditions so that we
22 can provide copies to the parties and to pretrial
23 services here in the courtroom.

24 Good, my printer is working. Hold on a
25 moment. Mr. Zargar, you'll make sure that the new

N88zzHARh-ND

1 sentencing date is reflected in the docket memo?

2 THE LAW CLERK: Yes.

3 THE COURT: Is there anything else that we
4 should address together today?

5 MS. KELLY: No, your Honor.

6 MR. CECUTTI: No, your Honor. Thank you.

7 THE COURT: Thank you, all. Stay safe and
8 keep well. We're adjourned.

9 MS. KELLY: Thank you, your Honor.

10 (Adjourned)